BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Randall and Merle Paul	:	
	:	
v.	:	C-2020-3021733
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses a formal Complaint filed by Randall and Merle Paul (Complainants) because Complainants did not prove that PPL Electric Utilities Corporation (PPL) violated the Public Utility Code (Code) or the regulations of the Pennsylvania Public Utility Commission (Commission).

HISTORY OF THE PROCEEDING

On August 13, 2020, Complainants filed a formal Complaint alleging that PPL had failed to provide reasonable service in that PPL had advised Complainants that it would cost approximately $40,000.00 to run a new distribution line and to place equipment to restore service to Complainants' rural property whereas Complainants wanted the work done for the $14.00 reconnection fee associated with accounts disconnected for nonpayment.

On September 23, 2020, PPL filed an Answer to the Complaint. In that Answer, PPL denied that it had violated the Code or any regulation of the Commission averring that there

had been no account for Complainants' property since 2011 and denying that PPL had a duty to run a line to the property essentially at no cost to Complainants. PPL asked that the Complaint be dismissed.

On September 24, 2020, a hearing Notice was issued setting November 3, 2020 as the date for a telephonic hearing in this case.

The hearing of November 3, 2020 was cancelled because of scheduling conflicts, and the hearing was rescheduled by Notice issued October 27, 2020. The hearing was rescheduled for December 17, 2020.

On November 30, 2020, a standard form prehearing Order was issued.

On December 17, 2020, the hearing was again rescheduled because of outstanding discovery issues, this time to February 2, 2021.

On February 2, 2021, a telephonic hearing convened. Randall Paul presented Complainants' case, testifying on his own behalf and presenting four exhibits that were received into evidence: Complainants Exhibit A, two photographs of Complainants' property where service had been provided prior to 2011; Complainants Exhibit C, an aerial map from Google showing the property; Complainants Exhibit D, a redacted Invoice; and Complainants Exhibit E, a letter from PPL to Complainant Randall Paul dated September 29, 2020. Kimberly Krupka, Esquire, appeared on behalf of PPL and presented the testimony of PPL's witness, Michael Hadginske, a Regional Design Supervisor employed by PPL, and PPL Exhibit 1, an Account Contact History; PPL Exhibit 3, the Answers of PPL to Complainants' discovery requests, Set I; PPL Exhibit 4, Rules 10 and 3 extracted from PPL's tariff; and PPL Exhibit 5, Rule 4 extracted from PPL's tariff.

The transcript in this case was filed with the Secretary of the Commission on February 15, 2021, and the record closed on that date.

As will be explained, below, Complainants did not show by a preponderance of the evidence that PPL violated the Code or a regulation of the Commission; therefore, the Complaint must be dismissed.

FINDINGS OF FACT

1. Randall and Merle Paul are the Complainants.

2. PPL Electric Utilities Corporation, a Commission jurisdictional electric distribution company (EDC), is the Respondent.

3. This case concerns service to a lot owned by the Complainants at 0 River Drive, Dalmatia, PA. Tr. at 5.

4. Complainants' lot is not the site of their residential service address. Tr. at 5.

5. Complainants' lot is immediately adjacent to the Susquehanna River (the river). Tr. at 7-8; Complainants Exhibits A, C.

6. River Drive is a paved road about one mile in length that follows the course of the river. Tr. at 7; Complainants Exhibit C.

7. In the 1970s and 1980s, a farmer rented lots along the road as campsites, but Complainants' lot was and remains privately held by them. Tr. at 7.

8. Before 2011, many of the lots, including the Complainants', had electric service. Tr. at 7.

9. At the end of the 1980s, the farmer discontinued his lot rental business, but Complainants continued to receive electrical service from PPL on their lot. Tr. at 7.

10. The only permanent structure on Complainants' lot is a small shed. Tr. at 8; Complainants Exhibit A.

11. There is still a utility pole on the lot, a breaker box, and two camper hook-ups, but no electric service line runs to the lot, and the equipment is currently not energized. Tr. at 8; Complainants Exhibit A.

12. The meter on the lot was removed on October 28, 2011, because the meter had stopped providing telemetry due to a flood on the river in September, 2011[1], and mud and water were found in the meter base by a PPL technician. Tr. at 11, 14.

13. There were no lots along River Drive previously served by PPL using electricity in October 2011, and the line was de-energized. Tr. at 27.

14. Over the years, the Complainants have maintained the lot, mowing it at intervals and parking a camper there, seasonally. Tr. at 8, 18.

15. There is a currently inactive billing account for the lot, and when Complainant called PPL to inquire about reconnection, he was told that the charge would be $14. Tr. at 10.

16. Lines and poles were removed from the lot in 2016 without notice to Complainants. Tr. at 15.

17. Complainants realized in 2012 that there was no electric service at the property. Tr. at 20.

18. The first time that Complainants contacted PPL to have electric service restored was June 9, 2020. Tr. at 20.

[1] Tropical Storm Lee. Tr. at 21.

19. From 2012 to 2020, PPL did not consider Complainants to be active customers with respect to their property on River Drive. Tr. at 28.

20. PPL carries Complainants' account as, "finalized." Tr. at 28.

21. During the period from 2016 to 2020, no prior customers on River Drive requested reconnection from PPL. Tr. at 28.

22. PPL did not reach out to any prior customers on River Drive to ascertain whether any desired reconnection, because that is not PPL's "standard practice." Tr. at 28.

23. In order to restore electric service to Complainants' property, new facilities would have to be designed, and a calculation made of the estimated costs and material required, and then the job would be scheduled once any invoices were issued and paid. Tr. at 30

24. A line extension is speculative when, in the Company's judgment, the continued future use of the facilities by any customer is uncertain, and having a camper that can be easily towed away is uncertain. Tr. at 33; PPL Exhibit No. 3 (extract from PPL Tariff Rule 3).

25. Because Complainants' property is a camp-site lot that is not permanently occupied and could be abandoned by Complainants at any time, PPL regards restoral of electric service to the lot as a "speculative line." Tr. at 30-31.

26. To install a "speculative line," PPL requires a minimum distribution revenue guarantee for speculative line extensions equal to the Company's estimated fully allocated installation and removal costs. Tr. at 33; PPL Tariff Rule 4.

27. PPL removes lines as part of a multi-year process. Tr. at 35.

28. The $14.00 reconnection charge originally quoted to Complainants by a PPL representative assumed existing service at a customer's residence, not for constructing a new distribution line. Tr. at 35.

29. PPL is willing to reconnect Complainants' lot, subject to the provisions of its tariff. Tr. at 36, 39.

30. Based on PPL's approximation of $40,000 to restore service to Complainants' lot, that total amount would be spread over five years (or $8,000 per year) which would mean that Complainants would have to pay approximately $667 per month for service with any shortfall paid at the end of the year. Tr. at 37.

31. PPL's approximation of restoral costs in this case is based on comparison with similar construction projects. Tr. at 37-38.

DISCUSSION

As the proponent of a rule or order, the Complainants in this proceeding bear the burden of proof pursuant to Section 332(a) of the Public Utility Code. 66 Pa. C.S. § 332(a). To satisfy this burden, the Complainants must demonstrate that PPL was responsible for the problems alleged in his Complaint through a violation of the Public Utility Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. 66 Pa. C.S. §701; *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990) *alloc. den.*, 529 Pa. 654,602 A.2d 863 (1992). In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainants of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainants shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainants have not satisfied their burden of proof. The Complainants now have to provide some additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

In this case, and for the reasons explained below, the Complainants have not met their burden; therefore, the Complaint must be dismissed.

This case is about an attempt by the Complainants to have PPL run a distribution line and reinstall facilities at a lot immediately adjacent to the Susquehanna River at the cost of $14.00 to Complainants. In the past, the Complainants used the lot as a campsite. There was electric service to the site until a flood in 2011, after which service was discontinued and, in 2016, the nonfunctioning line and equipment were removed. Complainants want this work done at no cost to themselves save a $14.00 reconnection charge that was allegedly quoted to them by a PPL representative in 2020 when they first asked for reconnection of electricity at the site. After informing Complainants that the $14.00 amount was for the reconnection of service disconnected for non-payment (see, PPL Exhibit No 1), PPL prepared an estimate of the costs that would be involved in restoring service, including running a new high voltage distribution line to the property. PPL told the Complainants that it would cost them approximately $40,000 to re-establish service to their lot.

In essence, Complainants have asserted that PPL has refused to provide safe, adequate and reliable service at a reasonable cost. If it was shown by a preponderance of the

evidence that this is true, then PPL would be in violation of the Public Utility Code at 66 Pa. C.S. § 1501. The statute at Section 1501 governs allegations of unreasonable or inadequate service. Pursuant to Section 1501, the Commission has original jurisdiction over the reasonableness and adequacy of public utility service. *Elkin v. Bell Tel. Co*., 372 A.2d 1203 (Pa. Super. 1977), *aff'd* 420 A.2d 371 (Pa. 1977); *Behrend v. Bell Tel. Co*., 243 A.2d 346 (Pa. 1968). As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at Section 1501 does not require perfect service or the best possible service but does require public utilities to provide reasonable and adequate service. *Analytical Lab. Servs., Inc. v. Metro.Edison Co*., Docket No. C-2006608 (Order entered December 21, 2007); *Emerald Art Glass v. Duquesne Light Co.,* Docket No. C-00015494 (Order entered June 14, 2002); *Re: Metrop. Edison Co*., 80 Pa. PUC 662 (1993).

Section 1501 states, in pertinent part:

> § 1501. Character of service and facilities.
>
> Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. . . .

66 Pa. C.S. § 1501.

When the Complainants first contacted PPL about this work, there had been no electric service to their lot for about nine years, and virtually all of PPL's then non-operational facilities had been removed three to four years earlier in 2016. Complainants were aware of this and that the facilities serving the lot had, in fact, been de-energized as early as 2011 or early 2012 before their ultimate removal.

Let us first address the issue of the $14.00 reconnection fee. It is clear on the face of PPL Exhibit No. 1, a PPL call log, that on December 2, 2020, Complainant Randall Paul was told by a PPL representative that the $14.00 reconnection fee he claims to have been previously quoted was applicable to reconnections of service disconnected for non-payment, not for rebuilding a distribution line. Complainant Randall Paul is a professional engineer. For him to request throughout the hearing in this matter and even in his closing argument that PPL reconstruct a distribution line and completely replace the facilities at his campsite for $14.00 is unreasonable because he testified knowing that this statement, if indeed made by a PPL representative, was based on incorrect facts as PPL had explained to him. Assuming *arguendo* that Complainant was told that a "reconnection fee" would be $14.00, this error was explained to Complainant by PPL months before the hearing.[2] See PPL Exhibit No. 1. I note that aside from his own assertion, Complainant did not provide any evidence in fact or citation to the law to show a duty on the part of PPL to undertake a major rebuilding project for a contribution of $14.00 from Complainants.

Complainant also argues by inference that because he did not receive a written notice from PPL to inform him that service facilities had been disconnected and removed from his lot nine years earlier, that PPL is now responsible for their replacement (for $14.00). Complainant is trying to boot-strap from the regulatory requirements of the Commission rule applicable to disconnections of existing service for nonpayment to a situation in which Complainant had constructive notice for the almost nine years that his service was disconnected. The first time that he inquired about restoration of service was in 2020. This was after removal of the electric meter at the site in 2011 (with no subsequent replacement). This was after the complete removal of facilities in 2016. PPL's witness testified that had a residence been present on the site in 2011, at least a door-hanger would have been left, but there was no residence. While PPL might have taken additional steps to notify Complainants of its intentions, it has not been established that this is a regulatory requirement under the facts of this case.

At hearing, PPL pointed to its tariff and the provisions therein relative to speculative line extensions. A utility tariff has the force and effect of law in Pennsylvania, and is legally

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[2] Complainant's insistence that the work of the scope contemplated should be undertaken for $14.00 is unreasonable, particularly given his experience as a professional engineer.

binding upon the utility, its customers and the public. 66 Pa. C.S. § 1303; *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981). A line extension is speculative when, in the Company's judgment, the continued future use of the facilities by any customer is uncertain, and having a camper that can be easily towed away is uncertain. Tr. at 33; PPL Exhibit No. 3 (extract from PPL Tariff Rule 3). Because Complainants' property is a camp-site lot that is not permanently occupied and could be abandoned by Complainants at any time, PPL regards restoral of electric service to the lot as a "speculative line." Tr. at 30-31. To install a "speculative line," PPL requires a minimum distribution revenue guarantee for speculative line extensions equal to the Company's estimated fully allocated installation and removal costs. Tr. at 33; PPL Tariff Rule 4. Complainant has indicated that his intent is to have a camper on the lot that can be moved at any time, specifically because there can be flooding. The camper would not be a permanent fixture. That is speculative service, and in such cases it is specifically permitted that PPL charge the cost of installing and removal of the service.

Complainant failed to show by a preponderance of the evidence that PPL has refused to provide reasonable service. To sustain the Complaint in this case would ultimately result in shifting the cost of discretionary construction from the ratepayers to be benefited onto all ratepayers who, in a scenario such as this, would derive no benefit at all.

Conversely, in his closing argument, Complainant argued that PPL has, "broken the rules," but pointed to no rule, regulation or provision of the Public Utility Code that has been broken in this case. Complainant also contended that, " . . . PPL has a strong financial reason to make this line go away." In fact, the line has been, "gone" since 2016 when it was removed, or earlier if we recognize that the line was de-energized in 2011. In 2016, with no request from a customer to restore service, PPL acted prudently in removing an unused, downed distribution line and unused equipment the safety of which was compromised by immersion and/or storm damage.

Section 1501 contains within it a "reasonableness" standard. Under the facts of this case, it is not reasonable for PPL to be ordered to construct—for $14.00—a distribution line and facilities to provide electric service to a campsite, the owners of which have not asked for service

restoration for almost nine years. Complainants have failed to establish by a preponderance of the evidence that PPL has violated any provision of the Public Utility Code or the rules and regulations of the Commission. Accordingly, their Complaint must be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

4. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact," is insufficient. *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

5. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the Commission. Subject to

the provisions of this part and the regulations or orders of the Commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. 66 Pa. C.S. § 1501.

6. A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers and the public. 66 Pa. C.S. § 1303; *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Randall and Merle Paul against PPL Electric Utilities Corporation at Docket No. C-2020-3021733 is dismissed as Complainants have not met their burden of proof.

2. That Complainants' request that the Commission order PPL to rebuild a distribution line and to replace equipment at 0 River Drive, Dalmatia, PA, for $14.00 is denied.

3. That the Secretary of the Commission mark this case, closed.

Date: June 1, 2021

_____/s/_____
Dennis J. Buckley
Administrative Law Judge